

EXHIBIT

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From: [Edward Goolsby](#)
To: [Michael Whitticar](#); [Denis Dennis](#)
Cc: [Todd Mensing](#); [Louis Liao](#); [Michelle Rivers](#); [Valerie Koinis](#)
Subject: Re: Energy Vault v. USE - Summary of Today's Meet and Confer
Date: Friday, May 24, 2024 10:34:00 PM
Attachments: [2024.05.23- USE OBJECTIONS TO ENERGY VAULT RFPs.pdf](#)
[2024.05.23- Defendants Answers and Objections to First Set of ROGs \(1\).pdf](#)

Mike,

Thanks for your time on today's meet and confer. As discussed, below is our understanding of the parties' positions regarding the discovery issues that we discussed. Please let me know if there are any disagreements.

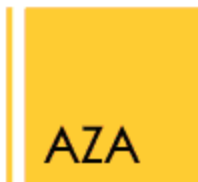
1. **Metadata** – Energy Vault previously requested metadata for all documents. See Instruction No. 9. You said that USE would provide the native versions of documents produced by USE. This may resolve the issue. Please provide the native files corresponding to any documents produced by USE.
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2. **Requests for Production** – As for outstanding documents that have not been produced, you stated that USE will supplement its production by June 7. Once this upcoming document production is complete, you said that USE is not withholding relevant, non-privileged documents based on your objections, including any documents and communications related to the transaction subject to this lawsuit. **Please confirm this understanding is correct by amending your RFP responses accordingly on or before June 7.**
3. **Privilege Log** – Beyond communications with trial counsel of record after the filing date of this lawsuit, please confirm that no other privileged documents are being withheld.
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4. **Interrogatories** – USE agrees to address the following issues by June 7.
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 - a. **No narrative response** – You acknowledged that certain interrogatories require a narrative response that explains USE's contentions on various issues that USE has not provided, including for Interrogatory Nos. 2, 3, 4, 5 and 6. Please supplement USE's responses accordingly to address the issues below.
 - i. Interrogatory No. 2 – USE needs to say whether they contend each transformer is operational, whether they met specifications, and why they meet these specifications.
 - ii. Interrogatory Nos. 3 & 5 – USE needs to explain why it believes 38 out of 40 Transaction Transformers “fully met the contract specifications and industry standards, were merchantable, and were fit for their intended purpose.” USE identifies several standards in ROG 5 that it contends applies, but then does not explain in ROG 3 why 38 Transaction Transformers met each of these standards.
 - iii. Interrogatory No. 4 – USE needs to identify all the specifications that USE contends applies to each transformer.
 - iv. Interrogatory No. 6 – USE needs to identify which specification or standards conflict between the Proposals and the Purchase Order, explain why they conflict, and whether the Transformers met either of the conflicting sets of standards.
 - b. **Missing documents referenced in responses** – Defendant's response to

Interrogatory No. 1 includes references to documents that were not produced. You stated that USE would supplement its answers to include Bates number references, including to the multiple versions of the Purchase Order USE claims exist. In addition, it was unclear from our call if USE is claiming that there was a “confirmation” document that somehow varied the agreement between the parties. If this is USE’s contention, please also amend to include and identify by Bates number this “confirmation” document.

- c. **Unanswered Interrogatories** – Please provide answers to Interrogatory Nos. 7-11, which were not answered. Instead, these responses say “Waiting for additional input from client.”

Have a great holiday weekend.

Thanks,
Ward



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